

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Appeal No. 697-SB of 1998

Date of decision: 23rd March, 2010

Vidya Parshad Tiwari

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. Harbhagwan Singh, Senior Advocate with
Mr. Amit Kumar, Advocate for the appellant.
Mr. Manish Deswal, Deputy Advocate General, Haryana
for the State.

KANWALJIT SINGH AHLUWALIA, J.

Present appeal has been filed by Vidya Parshad Tiwari son of Ram Saran Tiwari. He was named as an accused in case FIR No.729 dated 14.06.1997 registered at Police Station Central Faridabad under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as, 'the Act'). The appellant has been convicted by the Court of Special Judge, Faridabad.

The appellant was a Depot holder for supplying sugar and kerosene as ration to the beneficiaries under the Public Distribution System. The trial Court came to the conclusion that the accused had failed to maintain the account books properly regarding the months of May and June, 1997. He failed to account for 4 quintals 42 kilograms and 50 grams of sugar and 1005 liters of kerosene pertaining to the quota for the month of May, 1997. The appellant also failed to account for 900 liters of kerosene out of the allotted quota for the month of June, 1997. The

appellant had not maintained the sales and stock registers in consonance with the provisions of Clause-9 of the Haryana Prevention of Hoarding and Maintenance of Quality Order, 1977 (hereinafter referred to as, 'the Quality Order'). Furthermore, it was held that the sale register of sugar for the month of May 1997 contained various blank entries against which signatures of the consumers were appended and thus, he had also violated Clause-6 of the Quality Order. For these violations, the appellant was held guilty of offence under Section 7 of the Act. Having held the appellant guilty, he was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for three months. It has been submitted that the appellant had deposited the fine.

In the present case, FIR was registered on the basis of a written communication sent by J.B. Gondia, District Food and Supplies Controller, Faridabad. It was stated in the FIR that the complainant along with his staff on 13th June, 1997 had conducted the inspection of the premises of Vidya Parshad Tiwari, Depot holder, Rajiv Nagar, Faridabad. The appellant had received 6 quintals of levy sugar from the wholesale godown of CONFED, Faridabad in the month of May 1997 for distribution to the ration-card holders. After inspection of the registers, it came to the light that the Depot holder had misappropriated 4 quintals 42 kilograms and 50 grams of sugar and there were blank entries in the register, which were allegedly signed by the consumers. At the time of inspection, there was no stock in the ration Depot. Furthermore, in the month of May 1997, the Depot holder lifted 2860 liters of kerosene for distribution. The Depot holder had not made any entry regarding the quantity of kerosene distributed to the ration-card holders. According to the register, the Depot holder had shown distribution of kerosene to 265 ration-card holders. If a

maximum of 7 liters of kerosene per ration-card holder is taken into consideration, then also the Depot holder could not distribute more than 1855 liters of kerosene. In this manner, the Depot holder had misappropriated 1005 liters of kerosene. In the month of June 1997, the Depot holder had lifted 2860 liters of kerosene. No entry was shown in the sale register regarding quantity of the kerosene received and its distribution to the ration-card holders. The Depot holder had shown the distribution of kerosene to 280 ration-card holders. If a maximum of 7 liters of kerosene per ration-card holder is taken into consideration, then the total distribution will come to 1960 liters. In this manner the Depot holder had misappropriated 900 liters of kerosene.

These violations gave rise to the presumption that the goods meant for distribution through Public Distribution System were sold at a higher price in the open market. For these alleged irregularities and violation of the Quality Order, Special Judge, Faridabad served notice of accusation upon the appellant on 12th January, 1998. The appellant pleaded not guilty and claimed trial.

J.B. Gondia, District Food and Supplies Controller, Faridabad appeared as PW-1. He reiterated as to what was stated in the complaint Ex.PA, contents of which have been noticed above. In cross examination, this witness stated that no ration-card holder came with any grievance at the spot against the accused. However, the following suggestion was put to this witness:

“It is wrong to suggest that the accused was ill in those days and in his absence kerosene and sugar were distributed to the card holders by his younger brother who might not have been able to maintain the record properly. I did not verify from the card holders whose names were entered in the registers that he or she had actually not received kerosene or sugar. It

is wrong to suggest that the accused has been falsely implicated in this case.”

A perusal of the above suggestion reveals that the accused was conscious of not maintaining the record.

Rishi Pal ASI PW-2 had arrested the appellant on 16th July, 1997.

Rurra Ram ASI PW-3 was entrusted with the investigation on 14th June, 1997. He had recorded the statements of the witnesses and had also prepared the rough site plan Ex.PB.

Prosecution has placed on record the Quality Order as Ex.PC. Mr. Harbhagwan Singh, Senior Advocate appearing for the appellant, has extensively referred to the Quality Order Ex.PC. This order defines a Dealer as under:

“2.(b) ‘Dealer’ means a person engaged in the business of sale or storage for sale of any article, whether such business is carried on in retail or in wholesale, and include the distributing agent of the selling agent of such person;”

Clause 3 of the Quality Order reads as under:

“3. The Government may, by notification, in the official Gazette, in respect of any article;

- (a) the maximum quantity which may, at any one time, be possessed by a dealer or a producer;*
- (b) the maximum quantity which may, at any one time, be possessed by any consumer;*
- (c) the maximum quantity which may, in any one transaction be sold to any person by a dealer or a producer;*
- (d) the quantities fixed in respect of any article under this clause may be different in different localities;*

Provided that no stock limit shall be fixed in respect of producers regarding sugar, khandsari, gur and shakkar.”

It will also be apposite here to reproduce Clause 9 of the Quality Order:

“9.(1) The physical stock balances of various articles in a fair price shop, authorized and approved by the Government or by any officer authorized by it in this behalf, shall conform to the book balance as per account books maintained by him.

(2) All purchases, sales and production made will be correctly accounted for in the account books maintained and shall conform to the actual transaction made.”

It is contended before me that the Government has issued no notification under sub-clause 1 of Clause 6. It is further submitted that in terms of Clause 3 also, no notification was issued. It has been urged before me that until under Clauses 6 and 9, the State Government had prescribed maximum quantity of any article which may be sold to any consumer or group of consumers, it cannot be held that there was any misappropriation of kerosene or sugar by the appellant.

I have given my thoughtful consideration to the submissions made before me. The prosecution may have failed to prove on record the subsequent notification which prescribes maximum quantity of an article which can be issued to a card holder. It is evident that the prevailing practice demands that sale and stock registers ought to have been truthfully filled by the appellant. The appellant is also conscious of this fact. Therefore, a suggestion was given that due to sickness, the appellant may not have filled up the registers and the Depot was managed by his brother Ram Parkash Tiwari. The statement of the accused under Section 313

Cr.P.C. was recorded and all incriminating circumstances were put to him.

He denied the same and stated as under:

“I am innocent. Entries in the registers Ex.P-1 to Ex.P-4 are in the handwriting of my brother Ram Parkash Tiwari, who committed some mistakes.”

Furthermore, Ram Parkash Tiwari was examined as DW-1, who in examination in chief stated as under:

“Vidya Parshad accused is my brother. On 11th of April, 1997 he had gone to his native village as our mother was ill at that time. He returned around 15th or 16th of June, 1997. In his absence I had looked after the running of his ration depot. I had distributed various articles to the consumers against ration cards. I could not maintain appropriate entries in the account books because of rush and my lack of experience.”

Thus, it is a case of the accused that the requisite registers were not maintained and they had not depicted the quota received, the sales effected and the stocks available. Consequently, there was a violation of Clause 9 of the Quality Order, which specifically provides that physical stock balance of various articles in a fair-price-shop should conform to the book balance as per the account books maintained by the Dealer.

Having held that the appellant had not maintained the registers in consonance with the procedure prescribed, it is difficult for this Court to assume that the stock not available was sold in the open market. Thus, this Court at the most can say that the appellant was remiss in his duty to maintain the necessary registers and account books. The offence under Section 7 of the Act is punishable for a term which should not be less than three months but which may extend upto seven years. Furthermore, all offences under the Act are to be tried in a summary

manner under Section 12-A of the Act and the maximum sentence which a Court can award for a summary trial is two years.

The inspection, in the present case, was carried in the month of June 1997. The appellant is in corridors of the Courts for the last about 13 years and he has suffered mental pain and agony of a protracted trial. Since this Court has already held that the appellant had failed to maintain the requisite registers and the account books, it would be in the interest of justice in case sentence of the appellant is reduced from one year to three months rigorous imprisonment.

With the aforesaid modification in sentence, present appeal is disposed of.

[KANWALJIT SINGH AHLUWALIA]
JUDGE

March 23, 2010
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